

Delta Stewardship Council Procedures for Contracting for Consultant Services and Architectural and Engineering Services for Specified Functions

I. *Introduction and Purpose*

Water Code section 85213 (as added by SB 1450, Ch.336, Stats. 2010) authorizes the Delta Stewardship Council (council) to contract for consultant services and for architectural and engineering services, to assist the council with all of the following functions ("specified functions"):

1. Preparation of the Delta Plan and associated environmental review.
2. Performance of the council's responsibilities, or the responsibilities of the Delta Independent Science Board, with respect to the Bay Delta Conservation Plan.
3. Determination of the consistency of state and local public agency actions with the Delta Plan.
4. Performance of scientific review to inform water and environmental decision making in the Delta.

Water Code section 85213(b) requires the council, prior to entering into contracts for consultant services for any of the specified functions, to first obtain and evaluate at least 3 bids or proposals pursuant to a competitive process, but exempts any such contracts from the State Contract Act and other provisions governing public contracting.

Water Code section 85213(b) requires the council, in entering into contracts for architectural and engineering services for any of the specified functions, to do so consistent with statutory provisions governing architectural and engineering contracts generally (Government Code section 4525 et seq.), but exempts the council from the statutory requirement in Government Code section 4526 to adopt regulations prior to contracting for those types of services.

Water Code section 85213 (b) requires the council to establish procedures for contracting for consultant services and for architectural and engineering services for any of the specified functions, which procedures shall be exempt from the Administrative Procedures Act.

II. *Policy*

The council will enter into a contract for consultant services or for architectural and engineering services for any of the specified functions upon identifying and justifying the need for such services. All consultant services or architectural and engineering services will be obtained through a competitive bidding process. More than one consultant or contractor may be selected, if deemed necessary to meet the needs of the council and that option is identified in the initial solicitation.

III. *Contracting for Consultant Services for Specified Functions*

Consultant services are services of an advisory nature, which provide a recommended course of action or personal expertise. By definition, consultant services do not include architectural and engineering services (PCC § 10335.5; SCM 3).

Contracting Unit staff, in consultation with the council's Legal Office, will be responsible for ensuring the most current council policy, guidelines, and procedures are followed prior to preparing competitive bid documents and contracts. The council will obtain and evaluate at least 3 bids or proposals pursuant to a competitive process. Consultant services solicitations and contracts for any of the specified functions are exempt from the State Contracts Act and other provisions governing public contracting.

Steps to process contracts for Consultant Services

To ensure that there is a competitive bid process with at least 3 bids or proposals, the minimum process for executing this type of contract includes:

A. Solicitation Process

Solicitation documents set out the criteria for determining the best qualified professional for the project which involves advertising with at least 3 bids or proposals. The minimum steps are:

1. Program Manager will meet with the Contract Officer to discuss the solicitation requirements.
2. Program Manager will submit a completed Solicitation Request to the Contract Officer, which includes the minimum requirements for the solicitation package:
 - A description of the problem to be solved or scope of services proposed to be performed, and how that scope falls within the specified functions.
 - Tasks or Deliverables.
 - Projected schedule for the project.
 - Description of responsive material that must be submitted.
 - Professional qualifications necessary to perform the required services.
 - Criteria for determining the best qualified professional for the project may include; qualifications, cost, qualifications and cost, or best value of predetermined requirements, such as, but not limited to, ability to meet timeframes.
 - Evaluation Form.
 - Names of Evaluation Team Members.
 - Estimated Contract Amount.
 - Solicitation Release Date.
 - Solicitation Response Date.
 - Anticipated Contract Term.
3. The Contract Officer will assign a Contract Analyst to work with the Program Contract Manager to prepare solicitation and related contract documents.
4. Solicitations may be advertised or sent to a minimum of 3 bidders selected from bidders lists from other state or local agencies; public and private universities and established technical science experts from academic institutions.
5. The bids or proposals received by the date specified in the solicitation will be scored and ranked by the evaluation team. The team may include persons not employed by the council.
6. The Contract Analyst will contact non-responsive bidders if less than three bids or proposals are received to document why they did not respond.

B. Contract Process

New/Amended Contracts:

1. The Program Manager will submit Form DSC115 to the Contract Officer, which will at a minimum include:
 - Council Board Resolution (if over \$500,000).
 - Remaining solicitation related documentation supporting due diligence and compliance with competitive bidding. Depending on the change, a new solicitation process may be required.

- A description of the Scope of Services to be performed and how that scope falls within the specified functions, including detailed project budget, contract amount and contract term if changed.
- A summary breakdown of the proposed or amended budget and expenditure plan for the amended scope of work.

C. Approval Process

The Contract Analyst will:

1. Route the final new/amended contract package for Administrative and Fiscal review and approval.
2. Send to the Legal Office for review and approval.
3. Send to the consultant for review and approval.
4. Final approval will be obtained, which consists of the following documents:
 - Form 115
 - New/Amended Contract (STD. 213, Exhibits)
 - Solicitation package, and replies (if new)
 - Evaluations (if new)
 - STD. 215 form for encumbrance of funds

These documents will be used to substantiate compliance by the council with all procedural requirements.

IV. ***Contracting for Architectural and Engineering (A&E) Services for Specified Functions***

The term architectural and engineering services shall include all architectural, landscape architectural, environmental, engineering, land surveying, and construction project management services, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform, including permitting and environmental studies, public outreach and meeting facilitation related to the foregoing. A&E services shall not include legal services rendered to the council, provided that nothing in these procedures shall prevent an A&E contractor from consulting legal counsel and including the fees as part of its reasonable overhead.

Contracting Unit staff, in consultation with the council's Legal Office, will be responsible for ensuring compliance with Government Code section 4525 et seq. and ensuring the most current policy, guidelines, and procedures are followed prior to preparing competitive bid documents and contracts for A&E services for specified functions.

The Request for Qualifications (RFQ) is the solicitation document that sets out the criteria for determining the best qualified professional for the project.

If the council determines that it is necessary or more feasible to have a project performed in phases, it shall not be necessary to negotiate the total contract price or compensation provisions at the time the initial phase is negotiated, provided that the Executive Officer shall have determined that the firm is the best qualified to perform the whole project at a fair and reasonable cost and that the contract contains provisions that the State, at its option, may utilize the firm for other phases and that the firm will accept a fair and reasonable price for subsequent phases to be later negotiated and reflected in a subsequent written agreement.

Retainer Agreements. The council may identify the general need for A&E services to assist in its overall mission and may enter into contracts for such services through a retainer agreement. Retainer agreements will provide a process for the development and execution of task orders for defined A&E work. Rates for such work shall be specified in a rate schedule to be attached to the original contract provided that rates may be modified and categories of work added by mutual agreement of the parties. Retainer agreements must comply with, Government Code section 4525 et seq.

Firms selected may be retained for up to one year or longer if needed to complete the project or the services.

A master contract may be written to encompass the entire project, with Task Orders written and executed through the contract approval process for specific tasks and dollar amounts, not to exceed the total amount of the master contract.

To preserve the ability of the council to negotiate the most favorable agreement, names of the most qualified firms will typically not be disclosed to the public until a contract is executed with the most qualified firm. However, the council may choose to publically disclose those names and discuss the A&E process at its discretion.

Practices which might result in unlawful activity, including but not limited to rebates, kickbacks, or other unlawful consideration are strictly prohibited. The council shall require an A&E contract to include a provision in which the firm represents that the contract was not obtained through rebates, kickbacks, or other unlawful considerations either promised or paid to a council employee. In addition to any other applicable legal proscriptions, failure to adhere to the representation may be cause for contract termination and recovery of damages under the rights and remedies due the council under the default provision of the contract.

A council employee will not participate in the selection process if the employee has a relationship, as specified in Section 87100 of the Government Code, with a firm seeking a contract.

Nothing in these procedures will be construed to abridge the obligation of the council or the firm to comply with all laws regarding political contributions, conflicts of interest, or unlawful activities.

Steps to process Contracts for A&E Services

To ensure that there is a competitive bid process with at least 3 bids or proposals, the minimum process for executing this type of contract includes:

A. Request for Qualification (RFQ) Solicitation Process

Solicitation documents set out the criteria for determining the best qualified professional for the project which involves advertising with at least 3 bids or proposals. The minimum steps are:

1. Program Manager will meet with the Contract Officer to discuss the solicitation requirements
2. Program Manager will prepare an advertisement for the Executive Officer's review and signature. The advertisement shall contain, at a minimum, the type of services required, a description of the project, a projected schedule for the project, a description of responsive material that must be submitted, and a date that responsive material must be submitted to the council. All solicitations must be advertised through the DGS eProcurement website and a statewide announcement through publications of the respective professional societies.
3. Program Manager will submit a completed Solicitation Request to the Contract Officer, which includes the minimum requirements for the solicitation package:
 - Approved advertisement.
 - Name of professional publication to place advertisement (*Approved PO Request Required*).

- Small Business Requirements, pursuant to Government Code 14837.
 - A description of the Scope of Services proposed to be performed.
 - Projected schedule for the project.
 - Description of responsive material that must be submitted including a statement of qualifications.
 - Professional qualifications necessary to perform the required services.
 - Criteria for determining the best qualified professional for the project.
 - Evaluation Form.
 - Names of Evaluation Team Members.
 - Estimated Contract Amount.
 - Solicitation Release Date.
 - Solicitation Response Date.
 - Anticipated Contract Term.
4. Evaluation Team will score and rank firms by the statements of qualifications that are received by the date specified in the RFQ. The Evaluation Team may include persons not employed by the council.
 5. Discussions regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services will be held with no less than three of the highest-ranked firms.
 6. The council will negotiate a contract with the best qualified firm at compensation that the agency determines to be fair and reasonable. Public Contract Code § 6106 sets forth relevant time frames that must be adhered to in the negotiation and contracting process. Negotiations shall begin within 14 days after the successful firm has been notified of its selection or upon receipt of the cost proposal. The firm should be notified if additional time is necessary to begin negotiations. Upon the completion of negotiations, the council and the private firm shall proceed to execute a contract so that the contract may be completed by the council within 45 days. The contractor should be notified if additional time is necessary to complete the contract.
 7. If the council is unable to negotiate a satisfactory contract with the firm considered to be the most qualified, negotiations with that firm shall be terminated. Negotiations shall be undertaken with the second most qualified firm. If the council is unable to negotiate a satisfactory contract with any of the selected firms, the council shall select additional firms in order of their competence and qualification and continue negotiations until an agreement is reached.

B. Contract Process

New/Amended Contracts:

1. The Program Manager will submit Form DSC115 to the Contract Officer, which will at a minimum include:
 - Council Board Resolution (if over \$500,000).
 - Remaining solicitation related documentation supporting due diligence and compliance with competitive bidding. Depending on the change, a new solicitation process may be required.
 - A description of the Scope of Services to be performed and how that scope falls within the specified functions, including detailed project budget, contract amount and contract term if changed.

- A summary breakdown of the proposed or amended budget and expenditure plan for the amended scope of work.

C. Approval Process

The Contract Analyst will:

1. Route the final new/amended contract package for Administrative and Fiscal review and approval.
2. Send to the Legal Office for review and approval.
3. Send to the consultant for review and approval.
4. Final approval will be obtained, which consists of the following documents:
 - Form 115
 - New/Amended Contract (STD. 213, Exhibits)
 - Solicitation package, and replies (if new)
 - Evaluations (if new)
 - STD. 215 form for encumbrance of funds
5. Obtain final approval from the Department of General Services, if applicable

These documents will be used to substantiate compliance by the council with all procedural requirements.